IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.862 of 2001
(Through jail)

Lala @ Laloji Prabhu Gobrai @ Usman Umar. ... Appellant
(Orig.Accused)

Versus

The State of Maharashtra ... ... Respondent

Ms.Daksha M. Shah (Advocate appointed) for Appellant.

Dr.F.R. Shaikh, Additional Public Prosecutor for Respondent-State.

CORAM : DR.S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.

Date of reserving the judgment : 29th September 2007

Date of pronouncing the judgment : 16th October 2007

JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. The Appellant, who was the accused in Sessions Case No.916 of 1996 before the Sessions Court, Greater Mumbai at Mumbai, has challenged the judgment dated 29.9.1999, convicting and sentencing him to rigorous imprisonment for life and for payment of fine of Rs.500/- and in default, to suffer further imprisonment for six months for the offence of

murder of his friend and colleague.

2. The accused, deceased and others were migrant labourers from Andhra Pradesh working in Sasoon Dock, Mumbai. They habitually consume alcohol and drugs like *charas* and brown sugar. They live in the premises of Sasoon Dock itself. They sleep in the passage of a building in Sasoon Dock or on the footpath.

3. The accused and the deceased had an altercation prior to the incident in which the murder of the deceased took place. The deceased had refused to allow the Appellant a smoke of narcotic, when asked for. The Appellant had told him that he would hit back. The incident took place on the very night after the deceased had gone to sleep. It is the prosecution case that the Appellant threw a large stone of 7 1/2 kgs. on the head of the deceased while he was in sleep and caused his death.

4. The accused has been put the aforesaid evidence. In the statement of the accused recorded under Section 313 of the Criminal Procedure Code, 1973, he has denied most of the

evidence put to him but has admitted he being identified by the eye witness, P.W.3 and also the stone produced in evidence as Article-1.

5. The prosecution has examined 13 witnesses, out of which the main witness is P.W.3 is an eye witness to the incident. His deposition about the incident has been corroborated by the medical evidence, contained in the doctor's evidence and the postmortem report. The prosecution has examined three doctors P.W.10, P.W.11 and P.W.13, who examined the accused and the deceased. The prosecution has examined the brother as well as the brother-in-law of the accused who disowned the accused and deposed about the undesirable character of the accused as P.W.6 and P.W.7. The prosecution has also examined two nephews of the deceased as P.W.1 and P.W.5. P.W.1 is the complainant. He deposed about the life style of the deceased. Aside from the above, the prosecution has examined two panch witnesses relating to the recovery of the clothes as well as the stone, being the weapon of assault as P.W.2 and P.W.8. The evidence of

P.W.8 showing the recovery of the stone is an important corroborative circumstance. The prosecution has examined two Police officers, one who received the initial information on the telephone and who arrived at the place of the incident and the other who investigated the case as P.W.8 and P.W.12, respectively. The prosecution has relied upon the Chemical Analyser's report, inter alia, showing the blood group of the deceased as well as the accused and that blood group is found on certain articles, including the stone. The prosecution has also relied upon the Chemical Analyser's report showing non-consumption of alcohol by the deceased.

6. It will have to be seen essentially from the oral evidence as to whether the charge of prosecution that the accused committed murder of the deceased by throwing a stone on his head while he was asleep, has been borne out.

7. P.W.3, the eye witness, has been a coolie. He knew both the deceased as well as the accused. He used to sleep on the footpath in Sasoon Dock area. He worked with Salim and Krishna aside from the deceased and the accused. He has

deposed that Shashikant who died on 16.6.1996 was near Lord Khandoba temple at 6 P.M. All the Dock workers were chit-chating in the relaxed mood. They were smoking brown sugar. The deceased refused to give a smoke to the accused. The accused recalled the incident of 5-6 months prior to that date when the deceased had assaulted the accused by throwing a stone on him. The accused bore a grudge. When he was refused the smoke, he told the deceased that, that would be his last night. The witness as well as the other Dock workers separated them during the quarrel and every one dispersed. After an hour at about 7.30 p.m., the witness went to collect his beddings. There is a passage in front of the office of one New India where the labourers used to keep their beddings. When he went to the passage to collect the bedding, the deceased was sleeping in the passage. The accused was standing at a distance of about 1 foot from the legs of the deceased. The witness saw the accused holding a big stone in the palms of his hands. The accused raised the stone towards his head and pelted the stone. The stone fell

on the head of the deceased. The deceased was facing the sky. He could not utter anything. He started moving his hands and legs like shivering. The witness ran away. He has deposed that he witnessed the incident from a distance of about 4-5 feet from the deceased and the accused. He returned at 11 p.m. to collect his bedding. By that time the Police had gathered. The dead body of the deceased was lying there. He was taken to the Police Station. In the night he along with others and the Police remained near the dead body.

8. On the next day, the Police took him to the Police Station, but did not inquire anything from him. He was again called on 18.6.1996 and then on 22.6.1996. The accused was shown to him and was identified and his statement was recorded.

9. His cross-examination has not resulted in rebutting any of the examination-in-chief relating to the incident. He has, inter alia, deposed in his cross-examination that he was not present at the time of the earlier incident when the deceased

had assaulted the accused. He has deposed that the accused had a quarrel with the deceased about 8-10 meters from the passage. The quarrel lasted for about 10-15 minutes near the temple. There was no one present when he witnessed the incident. The passage was 30 to 50 feet in area. He was at the entrance of the passage when he witnessed the incident. He did not talk with the deceased or the accused then. The incident lasted about a minute. When he returned at about 11 p.m. he did not talk with any one. Only when questioned by Police havaldar, he had told the Police that he had come to collect his bedding and narrated the incident to him, but he was not taken to the Police Station. He has also deposed that the two nephews of the deceased came in the passage at about midnight. His evidence, therefore, shows the confirmation of the incident. The question put in the cross-examination, in fact, shows the earlier quarrel which was the motive for the alleged offence and the description about the passage and the position of the deceased and the accused. His cross-

examination further shows that he was the sole eye witness. It also shows that he was a natural witness being the colleague of the accused and the deceased and was present in the Dock area at the time of the quarrel as well as at the time of the incident. He happened to witness the incident because he came to collect his bedding. This is an aspect which has been reconfirmed in the cross-examination.

10. It has been argued on behalf of the accused by Ms. Daksha Shah that delay in recording his statement has vitiated his entire evidence. Indeed, his statement has been recorded about 6 days after the incident. However, he has genuinely deposed that he was near the dead body along with the others and had answered the Police hawaldar, when questioned. The hawaldar was not the Investigating Officer. He could not have recorded his statement. The investigation was in progress on the next day also. He was called and released. After the accused was arrested, he identified the accused. Thereafter his statement was recorded. Hence, delay in recording the statement has not been at his end.

There has been some delay despite his presence and despite he attending the Police Station. His deposition about the delay stands to reason. The delay is explained.

11. It is also argued that his deposition does not mention about the blood or about the injuries to the deceased. That is correct. However, he watched the incident for about 1 minute before he fled. The incident could not have taken longer time. He returned in the night at about 11 p.m. to collect his bedding. It would be dark at that time. The other colleagues and the Police had gathered. The deceased was lying on the ground. It is, therefore, natural of an honest witness not to embroider his evidence by further details which he has not witnessed. Because he did not witness or depose about the injuries, his eye witness account cannot be, in any way, depleted.

12. The injuries suffered by the deceased have been corroborated by two doctors. P.W.11 was the doctor, who came first on the spot and gave the death certificate in respect of the deceased. He found the deceased lying in a

pool of blood with head injuries. He examined his pulse and he could not get the pulse. He found that there was no heart beat. He confirmed that the deceased was dead. The death certificate, Exhibit-28, shows that the deceased had head injury and was found at the road side at Sasoon Dock, lying dead and unconscious.

13. P.W.13 has carried out the postmortem. His evidence and the postmortem report produced by him at Exhibit-34, shows contusion of reddish blue colour on the forehead with C.L.W. 10.0 cm x 7.0 cm. His head was depressed on one side and the bone was exposed upwards. He also saw another depression on the left side upper part with C.L.W. 7.0 cm x 5.0 cm. There was another C.L.W. on the front overhead towards the right side of 1.4 cm x 0.5 cm. There was a contusion on nose top 1.5 cm x 1.4 cm reddish blue colour with nasal bone fracture. There was also a red colour abrasion on the right shoulder back 4.0 cm x 0.2 cm. Internal injuries on the body were a contusion of frontal scalp, left parietal occipital bone, crack fracture, another

fracture under right middle spheroid bone and the brain had blood clots. There was hemorrhage over the entire brain.

14. These injuries fully corroborate and support the eye witness account. The cross-examination of the doctor specifically shows the rejection of the suggestion that if a person is under the influence of narcotic drugs and falls down on any hard and blunt object, such injuries would result. The doctor has also refuted the suggestion that if a heavy stone is pelted and dropped on the forehead of a person sleeping over the tiles or any hard place, then injuries would be on the backside of the head.

15. Further corroboration of the prosecution case is found in the evidence of P.W.8, Panch, who made a panchanama of the clothes of the deceased, the dead body of the deceased as well as the stone. The important aspect about the evidence relates to the description of the dead body of the deceased. He has deposed about the injuries on the forehead and the back side of the head of the deceased. Both were bleeding injuries. He saw some white portion inside the injury on the

forehead. (That could be the brain of the deceased, which had sustained the hemorrhage). The injuries suffered by the deceased are accordingly, further corroborated by the Panch. He has deposed about a pool of blood at two-minute-walk distance. Sample of blood was collected by the Police. He saw a stone weighing 7 or 7 ½ kg at a distance of 2-3 feet from the pool of blood. He has also deposed about the blood stains on the stone and blue colour chappals near the stone, one of which had a blood mark. He has proved the panchanama, which has been marked Exhibit-20 in evidence. This panchanama was recorded soon after the information about the offence was given to the hawaldar and he came on the spot on 16.6.1996.

16. The cross-examination of the panch witness shows that he was also a coolie at the Sasoon Dock. He had seen an injury to the backside of the head of the deceased.

17. It is argued on behalf of the accused that the position of the dead body shown in the panchanama, Exhibit-20, is near one Siya Fisher King Company on the footpath. It is

further argued that this does not corroborate the evidence of the eye witness which shows that the deceased was sleeping in the passage where he was assaulted. The learned Advocate on behalf of the accused has taken pains to refer us through the evidence of various witnesses as well as at various places of the panchanama where reference to the passage as well as the footpath is made. We have also found reference to a staircase near the passage. We have collated the oral as well as documentary evidence. We find that usage of these words does not show any infirmity in the prosecution case. The evidence of P.W.1, the complainant, which shall be dealt with presently, shows that two of the friends of the deceased and the accused, one Salim and Narkar, who came to inform him about the incident, took him to a one storeyed building having passage outside the building and there was a ladder or staircase near the passage. His uncle, - the deceased, was lying below the staircase. This evidence shows that the staircase was near the passage and the passage was outside the building and

the deceased was lying near the staircase in the passage. Since the passage was outside the building, it could be described as a footpath also. Hence, the usage of these different words does not matter. It must be remembered that several buildings do not have a compound wall. The buildings in Sasoon Dock area are old construction. The passage near the staircase would abut on the road. Dead body of the deceased was found on the footpath as per the panchanama, Exhibit-20. The deceased was shown lying below the staircase in the passage which abutted on the footpath. There is, therefore, no material contradiction in the place of the offence or the place of the panchanama.

18. It is also argued that the stone was found to be at the distance of 7½ feet from the head of the deceased near the office of Maharashtra Fisheries as shown in the panchanama, Exhibit-20. The oral evidence as well as the panchanama, Exhibit-20, show that the Maharashtra Fisheries and Siya Fisher King Company are near or opposite one another. The evidence of the panch shows the two-

minute-walk distance between the body of the deceased and the stone. It is impossible that the distance of 72½ feet could be so meticulously calculated. In view of the clear oral evidence of the panch witness, P.W.8, showing the 2 minute-walk time taken to reach the stone, the recovery of the stone cannot be taken to be from a distance of 72½ feet. The evidence of the panch showing the recovery with the description of the clothes of the deceased, injuries of the deceased, the pool of blood, stone and the chhapals at close distance appears to be entirely genuine. The panchanama proved by the witness, therefore, shows the inquest of the dead body as well as recovery of the weapon, with which the offence was committed. The cross-examination of this witness also has not displaced the oral evidence or the recording of the panchanama.

19. The prosecution case shown by the eye witness account of P.W.3 is fully corroborated by the medical evidence contained in the postmortem report as well as the recovery of the weapon.

20. The prosecution has examined two witnesses showing the disposition and the character of the accused. P.W.6 and P.W.7 are brother-in-law and brother of the accused. Their evidence shows that the accused was an alcoholic and a drug addict. It shows that the accused was disowned by them and was asked not to come to their house. He had stolen some articles from the house of P.W.7. He had demanded some money from the wife of P.W.5, who had refused to give monies on an earlier occasion. Both these witnesses have not been cross-examined. Hence, this evidence has not been rebutted.

21. The complainant is the nephew of the deceased. He has deposed about the vocation of the deceased and his usual habits. He used to occasionally visit their house. His deposition shows that the deceased was also addicted to narcotics and liquor. He was informed about the assault on the deceased by Salim and Narkar. They had told him that the accused was the assailant. He had telephoned the Police Station. When the Police Constable arrived he was already

waiting at the gate of Sasoon Dock. He was taken in the Police van. Thereafter he led the Police to the body of the deceased and thereafter the stone.

22. He had been cross-examined on the alleged discrepancy between the footpath and the passage where the deceased was lying. The deceased was lying below the staircase with injury to his head. His cross-examination shows that the deceased was lying on the footpath and not in the passage. It has already been seen that there is not much difference between the passage and the footpath since the passage is near the staircase and the staircase of the building comes out under footpath.

23. There has been some discrepancy about the clothes of the deceased. P.W.1 has deposed in his examination-in-chief that the deceased was wearing brown shirt and a pant. In his cross-examination he has refuted the suggestion that he was not wearing a brown shirt or that he was wearing the yellow T-shirt and that he was not wearing a full pant. The evidence of P.W.8, panch, shows that the deceased wore

green T-shirt and a black half pant. However, these are minor anomalies which do not tarnish the evidence with regard to the actual incident.

24. The evidence of the Assistant Police Inspector, who arrived on the spot immediately upon the receipt of the telephonic information after making the station diary entry, also shows the office of Siya Fisher King Company and body of the deceased lying with head injury to the forehead and back of his head and the blood oozing out of it. He sent a Constable to obtain a doctor who gave his death certificate. He recorded FIR of P.W.1 and registered the crime. He has deposed about the green T-shirt and the black half pant worn by the deceased. He has further deposed about the office of the Maharashtra Fisheries as well as the passage near the godown of the Company. He has also deposed about the two stones lying in the passage with a pool of blood, including the stones in the passage. His evidence that he walked the distance of 72½ feet to the office of the Maharashtra Fisheries appears to be given upon reading the

panchanama, Exhibit-20. He has also deposed about the two slippers near the staircase. These slippers were near the stones. Hence, the stones were also near the staircase. The description of the passage and the body lying therein with the two stones where he noticed the blood, shows that the distance is neither accurate, nor correct. Rest of his evidence is natural and deserves to be accepted.

25. The prosecution has sent blood of the deceased as well as the accused for chemical analysis. They both are shown belonging to blood group “A”. The blood of the deceased did not test positive for alcohol. The prosecution has sent the stone, slippers as well as the clothes of the deceased for chemical analysis. The slippers, the blood group on the stone is shown to be inconclusive. The blood group on the slippers is shown to be of “A” group. The clothes of the deceased being the T-shirt and the half pant are also shown to have been stained with the blood at places. The blood group is group “A”.

26. The accused in his statement recorded under Section

313 of the Criminal Procedure Code has admitted that he was identified by P.W.3, the eye witness before the Police. He has also admitted that the stone produced before the Court was seen at the time of the incident by P.W.3. The evidence of P.W.3, the eye witness, corroborated by medical evidence showing the head of the deceased being smashed and the recovery of the stone of 7½ kg. fully proves the prosecution case.

27. Based upon the aforesaid evidence, the conviction and sentence awarded by the learned Trial Judge cannot be faulted. The Appeal is, therefore, dismissed. The conviction and sentence are maintained.

(DR.S. RADHAKRISHNAN, J.)

(SMT.ROSHAN DALVI, J.)